

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD LIONEL DYSON, ) CASE NO. C05-1500-MJP  
)  
Petitioner, )  
)  
v. )  
) REPORT AND RECOMMENDATION  
REED HOLTGEERT, )  
)  
Respondent. )  
\_\_\_\_\_ )

INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Richard Lionel Dyson is currently in the custody of the King County Jail. He has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he seeks to challenge his pending extradition to the State of Louisiana on the grounds that the Louisiana warrant which was used to arrest him was invalid. Respondent has filed an answer to the petition in which he argues that petitioner is not entitled to relief in this matter because his detention pursuant to a valid Washington State governor's warrant is proper, and because petitioner has not exhausted his state court remedies. The Court, having reviewed the petition, respondent's answer thereto, and the balance of the record, concludes that petitioner's petition should be dismissed for

01 failure to exhaust state remedies.

02 BACKGROUND

03 Respondent has not provided this Court with any documentation from petitioner's state  
04 court record to support his answer. Instead, counsel for respondent has submitted an unsworn  
05 declaration in which she sets forth the relevant facts. Because petitioner has not contested the  
06 facts set forth by respondent's counsel, the Court adopts those facts for purposes of this review.

07 Petitioner was convicted in the 19th Judicial District Court, Parish of East Baton Rouge,  
08 Louisiana of the crimes of felony theft, identity theft, and monetary instrument abuse. (Dkt. No.  
09 10 at 2.) Petitioner failed to appear for his sentencing hearing on April 30, 2003, and the East  
10 Baton Rouge court issued a no-bail bench warrant. (*Id.*) On January 26, 2004, petitioner was  
11 arrested in King County on suspicion of being a fugitive from justice. (*Id.*) The King County  
12 Prosecutor's Office filed a fugitive complaint, but the complaint was dismissed on April 21, 2004,  
13 because no governor's warrant had been issued. (*Id.*)

14 On January 22, 2005, petitioner was arrested in King County on an extradition matter  
15 involving the State of Nevada, and on additional Washington felony warrants. (*Id.*) At that time,  
16 petitioner was once again booked on suspicion of being a fugitive from justice based on the  
17 Louisiana bench warrant. (*Id.*) Petitioner was released on the Louisiana fugitive matter a few  
18 days later, but remained in custody on other matters. (*Id.*)

19 On February 15, 2005, the Governor of the State of Louisiana sent an extradition request  
20 to Washington Governor Christine Gregoire. (*Id.*) On March 11, 2005, Governor Gregoire  
21 issued a warrant for petitioner's arrest and extradition. (*Id.*) The governor's warrant was served  
22 on petitioner on March 24, 2005, by the King County Sheriff's Office, and petitioner was taken

01 into custody. (Dkt. No. at 3.)

02       On June 24, 2005, petitioner filed a habeas corpus petition in the King County Superior  
03 Court which apparently presented a challenge to his extradition on the grounds that the out of  
04 state warrant pursuant to which he was arrested was invalid because he had been arrested pursuant  
05 to the same warrant on previous occasions. (*See id.* and Dkt. No. 1 at 2.) On June 28, 2005, the  
06 King County Superior Court denied petitioner's petition, but stayed petitioner's extradition  
07 pending resolution of his appeal of the issue to the Washington Court of Appeals. (Dkt. No. 10  
08 at 3.) On September 8, 2005, the Washington Supreme Court appointed counsel to represent  
09 petitioner on appeal, and that appeal remains pending. (*Id.*)

10       On October 7, 2005, upon stipulation of the King County Prosecutor's Office, petitioner  
11 was released into the custody of Snohomish County so that Snohomish County felony charges  
12 could be addressed during the pendency of petitioner's appeal. (*Id.*) It appears from the record  
13 that petitioner is now back in the custody of King County. (*See* Dkt. No. 13.)

#### 14                                   DISCUSSION

15       Respondent argues in his response to petitioner's federal habeas petition that petitioner's  
16 current detention is proper under the laws and Constitution of the United States, and that the  
17 petition is premature because petitioner's challenge to his extradition is still pending in the  
18 Washington Court of Appeals. This Court concurs that the instant federal habeas petition is  
19 premature. However, before the Court reaches that issue, the Court must first address a  
20 preliminary matter not raised by respondent.

21       Petitioner filed his federal habeas petition under 28 U.S.C. § 2254. Section 2254 states  
22 that this Court has jurisdiction to consider "an application for a writ of habeas corpus on behalf

01 of a person in custody pursuant to the judgment of a State court only on the ground that he is in  
02 custody in violation of the Constitution or laws or treaties of the United States.” Petitioner is not  
03 in custody pursuant to a state court judgment at this juncture, nor is he seeking to challenge a state  
04 court judgment in these proceedings. It thus appears that jurisdiction is not proper under § 2254,  
05 and that petitioner’s federal habeas petition is more properly construed as one brought under 28  
06 U.S.C. § 2241.

07 Respondent argues that the instant petition should be dismissed because petitioner has not  
08 exhausted his state court remedies in accordance with § 2254(b) and (c). If the instant petition  
09 were properly construed as one brought under § 2254, the exhaustion provisions of § 2254 would,  
10 in fact, preclude this Court from granting petitioner any relief until he had properly exhausted his  
11 federal habeas claim in the state courts.

12 Section 2241, in contrast to § 2254, does not expressly require a petitioner to exhaust state  
13 court remedies before pursuing a writ of habeas corpus in federal court. However, principles of  
14 comity and federalism require that federal courts not entertain habeas challenges to ongoing state  
15 court proceedings unless the petitioner can show that he has exhausted available state avenues for  
16 raising his federal claims, and that “special circumstances” warrant federal intervention. *Carden*  
17 *v. Montana*, 626 F.2d 82, 83-84 (9th Cir. 1980).

18 Petitioner makes no showing that he has either exhausted available state court remedies  
19 with respect to his federal habeas claim or that “special circumstances” warrant this Court’s  
20 intervention in his ongoing state court proceedings. Thus, this Court declines to consider the  
21 merits of petitioner’s claim for federal habeas relief.

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CONCLUSION

For the foregoing reasons, this Court recommends that petitioner's federal habeas and this action be dismissed without prejudice. A proposed order accompanies this Report and Recommendation.

DATED this 1st day of February, 2006.



Mary Alice Theiler  
United States Magistrate Judge